
DIGEST

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HB 567 Original

2020 Regular Session

James

Abstract: Relative to certain pretrial procedures including issuance of subpoenas, appointment of counsel for certain persons, motions to obtain transcripts of preliminary examination proceedings, orders for preliminary examination, and service of subpoenas by sheriffs.

Present law (C.Cr.P. Art. 66) provides that upon written motion of the attorney general or district attorney setting forth reasonable grounds, the court may order the clerk to issue subpoenas directed to the persons named in the motion, ordering them to appear at a time and place designated in the order for questioning by the attorney general or district attorney, concerning any offense under investigation by him. Further authorizes the court to order the issuance of a subpoena duces tecum.

Proposed law provides that defense counsel may also give written motion to the court to order the clerk to issue subpoenas to persons named in the motion to appear for questioning. Further provides that defense subpoenas on behalf of an arrested person shall only be issued after an arrest is made.

Present law authorizes the attorney general or district attorney to determine who shall be present during the examination.

Proposed law adds defense counsel to those eligible to determine who shall be present during the examination.

Present law (C.Cr.P. Art. 292) provides that after the defendant has been indicted by a grand jury, the court may rescind its order for a preliminary examination.

Proposed law retains present law but provides that a defendant can preserve his request for a preliminary examination in writing prior to indictment.

Present law (C.Cr.P. Art. 293) provides that when a preliminary examination is ordered, the court is required to conduct the examination promptly but shall allow the defendant a reasonable time to procure counsel.

Proposed law provides that if the arrested person is determined to be indigent pursuant to present law, the court is required to appoint counsel to represent him at the preliminary examination.

Present law (C.Cr.P. Art. 294) provides that upon motion of the state or the defendant, a transcript of the preliminary examination proceedings may be made. The cost of the transcript preparation shall be paid by the party making the motion, unless the party is an indigent defendant.

Proposed law retains present law and requires that a copy of the preliminary examination proceedings be promptly provided to the state or defense counsel upon written motion.

Present law (C.Cr.P. Art. 732) provides that a subpoena may order a person to produce at the trial or hearing, books, papers, documents, or any other tangible things in his possession or under his control, if a reasonably accurate description is given.

Proposed law provides that the subpoena may also order a person to produce books, papers, documents, or any other tangible things in his possession or under his control at a preliminary examination. Further provides that a subpoena may be issued at the request of defense counsel or the state at any point after a defendant has been initially arrested for a charge, even if the state has not yet instituted prosecution by filing a bill of information or indictment and if the defendant is subsequently released.

Present law (C.Cr.P. Art. 734) provides that the sheriff of any parish in which the witness may be found or of the parish in which the proceeding is pending shall serve the subpoena and make return thereof without delay.

Proposed law provides that upon motion of an arrested person, the court shall appoint a person over the age of majority, who is not a party and who is residing within the state whom the court deems qualified to perform the duties required, to make service of process in the same manner as is required of sheriffs. Service of process made in this manner shall be proved as any other fact in the case.

(Amends C.Cr.P. Arts. 66(A) and (C), 292, 293, 294(D), and 732; Adds C.Cr.P. Art. 734(D))